

State of Hawai'i
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawai'i 96813

April 13, 2006

Chairperson and Members
Board of Land and Natural Resources
State of Hawai'i
Honolulu, Hawai'i

Board members:

**SUBJECT: REQUEST FOR APPROVAL OF A LAND CONSERVATION FUND
GRANT TO MAUI COASTAL LAND TRUST FOR PARTIAL MATCH
FOR THE PURCHASE OF AN AGRICULTURAL CONSERVATION
EASEMENT ON KAINALU RANCH, MOLOKA'I**

SUMMARY:

This Board Submittal requests approval of providing a grant of up to \$1,100,000 from the Land Conservation Fund to the Maui Coastal Land Trust ("MCLT"), to be used in conjunction with other funding secured by MCLT, to purchase a perpetual agricultural conservation easement on 167 acres of Kainalu Ranch in southeast Moloka'i. The estimated appraised value of the conservation easement is \$2,800,000; the Natural Resources Conservation Service (NRCS) of the U.S. Department of Agriculture (USDA) has committed to provide \$1,400,000 through the Farm and Ranchland Protection Program (FRPP) and the landowner has offered to provide \$300,000 as a bargain sale reduction in price. MCLT will hold the conservation easement to the property, and the current landowner will retain fee title and continue management of the property, subject to MCLT monitoring the conditions of the conservation easement.

BACKGROUND:

This acquisition is a joint effort of the MCLT, USDA/NRCS, and the State of Hawai'i to protect agricultural lands from future subdivision and residential development. MCLT, using a combination of funds from the FRPP, the landowner, and the Hawai'i Land Conservation Fund, will purchase a perpetual agricultural conservation easement from the landowner, restricting activity on the lands in perpetuity to agricultural uses.

The 167-acre property, Kainalu Ranch, is located on the southeast coast of Moloka'i approximately 18 miles east of Kaunakakai. The subject land consists of two narrow shaped

ITEM C-1

parcels (2-5-7-003-054) fronting Kam V Highway and rising to an elevation of approximately 1,450 feet. These parcels make up the ahupua'a known as Poniuohua I and II. The land is presently covered in koa haole and/or pasture grasses and is used for cattle grazing. The site is predominantly zoned Agriculture by the State, with the most makai (ocean-side) portion falling in the Conservation District. The parcel is zoned Agriculture by the County and designated Agriculture in the Community Plan. The parcel contains Prime and Priority Soils as designated by the USDA/NRCS. Cultural sites are located in the lower elevations of the property,

The greater Kainalu area also has 4 ancient fishponds along its coast, due to the numerous fresh water springs that line its seashore. At low tide one can see the fresh water bubbling up along the coast, especially, in the Poniuohua area. These springs indicate a very desirable living area, which accounts for a number of building sites, midden deposits, artifacts and graves on the lower areas of the Poniuohua parcels. In the early 1900s, these springs watered cattle that were herded along the shore and out over the reef to waiting freighters that slung them up onto the ship. Besides their cultural and historical value, the Poniuohua parcels also contribute to the recharge of the Waialua aquifer, due to the presence of its upland mesic forest, which feeds the lower elevation springs.

Current State and county regulations would allow a 22-lot agricultural subdivision as the "highest and best use" of the property from an economic standpoint. Full utilities and access are available to the property, including a well capable of supplying water adequate to service a 22-lot agricultural subdivision.

Section 9 of Act 156, Session Laws of 2005, provided an appropriation of \$1,100,000 from the Land Conservation Fund "for the purchase of agricultural easements to protect farm and ranch lands throughout the state" to "use and preserve federal farm and ranch land protection program funding for agricultural and cultural lands in Hawaii." To be eligible for USDA/NRCS FRPP funding, a farm or ranchland must contain prime, unique or other productive soil or historical or archaeological resources. MCLT applied for and was awarded funding in 2005 by USDA/NRCS through the FRPP program to purchase an agricultural easement for the subject property.

MCLT is a 501(c)(3) nonprofit organization, incorporated in 2001 for charitable, scientific, and/or educational purposes, including the acquisition, preservation, and protection of coastal lands in Maui Nui, in furtherance of the preservation of the integrity of the natural environment for the enjoyment of current and future generations. As such, MCLT qualifies under state law (Hawai'i Revised Statutes (HRS) Chapter 198) as a holder of conservation easements. To date, MCLT is the only entity in Hawai'i receiving federal farm and ranch land protection program funding.

A Cooperative Agreement between MCLT and the Commodity Credit Corporation (a financial arm of USDA) was executed August 18, 2005, outlining the financial transaction for the

acquisition of agricultural conservation easements and the long-term relationship of the parties for management. The CCC provides federal funding for the FRPP as a 50% match for purchases of permanent agricultural conservation easements on farm and ranchlands. MCLT agrees to hold the easement and provide permanent monitoring of the land to assure compliance with the terms of the easement by the current and all future landowners. The landowner will continue to manage the land for approved agricultural practices.

Under the Cooperative Agreement, the conservation easement must contain the following elements:

- 1) runs with the land in perpetuity;
- 2) prevents the land from being converted to nonagricultural uses;
- 3) provides for the administration, management, and enforcement of the easement by MCLT;
- 4) requires management of the property in accordance with a conservation plan that it developed, using standards and specifications of the NRCS field office technical guide, and includes certain specified language relating to this requirement;
- 5) where parcels are being enrolled in FRPP based on historical and archaeological resources, includes a paragraph identifying standards and guidelines for treatment and maintenance of these resources within the deed;
- 6) includes a specified "Contingent Right in the United States of America" provision;
- 7) includes provisions regarding the amount of impervious surfaces permitted on the property; and
- 8) includes a signature of a responsible NRCS official on the conservation deed, accepting the United States' property interest in the deed.

The value of the easement has been initially appraised at \$2,800,000 by Parker and Co. The appraisal is currently being reviewed by USDA/NRCS and by Department staff to determine if the appraisal is appropriate and reasonable. Should Department staff recommend, an independent State appraisal will be prepared before any transfer of State funds. The State will provide 50% of the appraised value, up to \$1,100,000. If additional funding is needed, the landowner will donate land value to make up the additional non-federal match for the purchase.

DISCUSSION:

When enacting Act 156, the Legislature was aware of the proposal to acquire an agricultural conservation easement over 167 acres of Kainalu Ranch, and specifically made an appropriation for a State contribution in the amount of \$1,100,000 in section 9 of the Act, to be used for the purchase of agricultural easements receiving federal farm and ranch land protection program funding. Staff believe that the proposal parcel has agricultural, watershed, cultural, and open space values, and confirms that federal farm and ranch land protection program funding will be used for the purchase of an agricultural conservation easement over the subject property. Staff

further believe that MCLT is a qualified 501(c)(3) non-profit organization with experience holding conservation easements on Maui, and is thus an appropriate entity to hold the proposed agricultural conservation easement over the subject property. The estimated value of the conservation easement is \$2,800,000. Should this appraisal be certified, the requested State funding of \$1,100,00, combined with a landowner contribution of \$300,000 in the form of a bargain sale reduction in price, would provide the 50% match needed to secure the federal funds. Staff recommend that, as an additional measure of ensuring that the State funds do contribute to the perpetual conservation of the subject property, that the award be made contingent on the conservation easement containing language stating that MCLT may only transfer its interest in the property with the prior written approval of the BLNR, and that any transfer must comply with rules of the federal FRPP program. The Governor approved the release of funds for this acquisition by the Maui Coastal Land Trust on March 15, 2006. Successful completion of this acquisition could encourage other owners of agricultural lands to explore an agricultural conservation easement, benefiting the entire State by protecting open space and preventing agricultural lands from being developed into large-lot residential developments.

RECOMMENDATION:


That the Board authorize the Chairperson to execute a Memorandum of Agreement with the Maui Coastal Land Trust, to provide a grant of up to \$1,100,000 from the Hawai'i State Land Conservation Fund for Maui Coastal Land Trust, to acquire and hold a perpetual agricultural conservation easement on Kainalu Ranch as discussed above, subject to:

1. certification of the appraisal as reasonable and appropriate by USDA/NRCS and by the Department;
2. if the initial appraisal is not certifiable, authorize the Department to obtain a second State contracted independent appraisal to determine fair market value of subject interest;
3. compliance with Act 156, SLH 2005 requirements;
4. compliance with the federal FRPP grant requirements;
5. the conservation easement containing language that provides:
 - a. that any interest acquired by MCLT may be sold, leased or otherwise disposed of only with the prior written approval of the BLNR;
 - b. should the conservation easement be sold, leased or otherwise disposed of in the future, that portion of the proceeds equal to the proportion of the original acquisition price paid for by the State, shall be repaid to the State; and

April 13, 2006

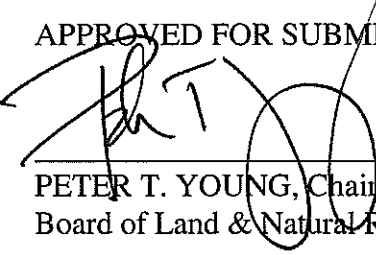
- c. that any conservation easement established may be transferred only as provided by rules of the federal FRPP program; and
- 6. approval of the Memorandum of Agreement and conservation easement by the Attorney General's office.

Respectfully submitted,



PAUL J. CONRY, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



PETER T. YOUNG, Chairperson
Board of Land & Natural Resources